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REVIEW OF DEVELOPMENTS PERTAINING TO THE PROMOTION AND PROTECTION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS OF INDIGENOUS PEOPLES:

PRINCIPAL THEME: INDIGENOUS PEOPLES AND THEIR RIGHT TO DEVELOPMENT, INCLUDING THEIR RIGHT TO PARTICIPATE IN DEVELOPMENT AFFECTING THEM

Note by the secretariat

1. At its eighteenth session, the Working Group on Indigenous Populations decided to highlight the issue of "Indigenous peoples and their right to development, including their right to participate in development affecting them" at its nineteenth session. In its resolution 2001/59 of 24 April 2001, the Commission on Human Rights welcomed the proposal to focus on the theme and invited Governments, intergovernmental organizations and indigenous and non-governmental organizations to provide information.

2. The purpose of the present note is to highlight some of the possible themes related to indigenous peoples and their right to development and to encourage a multidimensional and forward-looking exchange of views and information among indigenous peoples, States,

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United Nations bodies and non-governmental organizations. The points raised are based on submissions made in recent years by indigenous peoples, United Nations organizations and States. It is to be hoped that the discussions during the Working Group will help the international community to understand better the obstacles and opportunities with respect to indigenous peoples and their right to development and to consider effective ways of advancing this important issue in a joint effort.

The right to development

3. The Declaration on the Right to Development was adopted by the General Assembly in 1986. In its article 1, the right to development is defined as "an inalienable human right by virtue of which every human person and all peoples are entitled to participate in, contribute to, and enjoy economic, social, cultural and political development in which all human rights and fundamental freedoms can be fully recognized". In the preamble to the Declaration, development is described as "a comprehensive economic, social, cultural and political process, which aims at the constant improvement of the well-being of the entire population and of all individuals on the basis of their active, free and meaningful participation in development and in the fair distribution of benefits resulting therefrom".

4. The right to development contains several dimensions, including the principle of active, free and meaningful participation in the development process (art. 2) and non-discrimination (arts. 5 and 6). It also stipulates that States have the prime responsibility for implementing the right to development. In this sense, the Declaration expresses a shift in development thinking from "development as charity" or "good intentions" to "development as a human right" that includes corresponding obligations. This challenges States to ensure that there is a paradigm shift from indigenous policies based on welfare models to policies based on rights.

5. The World Conference on Human Rights held in Vienna in 1993 and most of the subsequent world conferences underlined the importance of the right to development and the indivisibility and interdependence of all human rights. The right to development may be understood as a single distinct right in the same way as such rights as the right to education or freedom of expression. Furthermore, development without respect for human rights leads to social exclusion, discrimination and inequality. The realization of all human rights in a context of underdevelopment and lack of resources can be extremely difficult.

6. The need to integrate human rights into development gave rise to the "rights-based approach to development", a strategy that is widely promoted by the United Nations. The aim of this approach is to integrate the norms and principles of the international human rights system into development programmes and projects, putting emphasis on accountability, empowerment, full and meaningful participation and non-discrimination. Poverty elimination, self-reliance and self-determination of individuals and peoples are at the centre of this approach.

7. The right to development is also an important right for the promotion of structural changes with the aim of overcoming inequality and poverty, not only in the international economic system, but also on the national level. In this sense, it is a potential means for protection against the negative impacts of and exclusion from development, both of which have marked the experience of indigenous peoples worldwide.

8. The right to development may be claimed both individually and collectively. The second paragraph of article 1 of the Declaration states: "The human right to development also implies the full realization of the right of peoples to self-determination, which includes, subject to the relevant provisions of both International Covenants on Human Rights, the exercise of their inalienable right to full sovereignty over all their natural wealth and resources." In its preamble the Declaration recalls the "right of peoples to self-determination, by virtue of which they have the right to freely determine their political status and to pursue their economic, social and cultural development".

Militarization and conflict

9. The Declaration recognizes the link between disarmament and development. Article 5 calls upon States to take measures to eliminate massive violations of human rights and situations resulting from racism and racial discrimination, colonialism, foreign domination and occupation, aggression, foreign interference and threats against national sovereignty, national unity and territorial integrity, threats of war and the refusal to recognize the right of peoples to self-determination. Over the nearly 20 years of the Working Group, indigenous representatives have recounted experiences of conflict, war, militarization, the imposition of foreign bases on their lands and the testing of weapons, including nuclear weapons, all of which have had direct and severely negative impacts on their right to development

Negative impact of development projects

10. Many indigenous peoples live in areas that contain important natural resources, including timber and forest produce, minerals and oil. Indigenous representatives have often alleged that they are evicted from their territories in the name of national development. When States evaluate economic activities in the national interest, indigenous concerns and priorities may be under-valued or ignored. Indeed, indigenous representatives have stated that the concept of the "national interest" sets up a dangerous paradigm whereby indigenous interests are seen as opposed to the interests of the State. Development activities on indigenous peoples' land have sometimes led to marginalization, imported illnesses, social problems (alcohol and substance abuse), impoverishment, social breakdown, violence (including increases in domestic violence) and migration to urban centres, where indigenous peoples face overt and systemic discrimination and a loss of their identity. Large dams have been built on indigenous territory leading to the flooding of villages and of areas necessary for agriculture, agro-forestry, hunting and gathering, or other economic and cultural activities. As a result of privatization or expropriation, indigenous lands have been transferred to private or State entities without the consent of the indigenous communities who are the traditional owners and are thereby denied their means of livelihood. In some cases national development projects may constitute a gross violation of indigenous peoples' right to development.

Poverty

11. Poverty is a denial of all human rights to an individual and group and erodes civil and political, as well as economic, social and cultural rights. As has been noted by the Working Group on numerous occasions, indigenous peoples form a disproportionately larger share among the poor, which leads to the hypothesis that there is a strong link between ethnicity and poverty. What are the causes of indigenous poverty? There are a number of explanations, which are often linked to each other. In some cases, it is the paucity of resources indigenous peoples have at their disposal for their own development processes, and the negative impacts of large-scale development projects on their lives and lands. In other cases it is the marginal role they play in the national development process and the exclusion from the market, which prevents indigenous peoples from enjoying the same opportunities as others. In yet other situations, it is direct discrimination and exclusion from society that keeps indigenous peoples in poverty. An understanding of the underlying causes of indigenous poverty is necessary in order to support indigenous peoples with public policies aimed at realizing their right to social, economic and cultural development without sacrificing their cultural identity. For this purpose indigenous peoples often seek special national and international measures and policies and greater access to economic resources.

Human rights considerations

12. International human rights law provides an important framework for the enjoyment by indigenous peoples of their rights. Common article 1 of the International Covenants on Economic, Social and Cultural Rights and on Civil and Political Rights recognizes the right of self-determination of all peoples as well as their right to freely determine their political status and their economic, social and cultural development. The same article of both Covenants states that all peoples may, for their own ends, freely dispose of their natural wealth and resources, and provides that a people may not be deprived of its own means of subsistence. Indigenous peoples have argued that common article 1 applies to all peoples, including indigenous peoples, without qualification. Recent observations made by the Human Rights Committee may indeed suggest that indigenous peoples' rights are covered by the article (see, for example, CCPR/C/79/Add.105, para. 7 and CCPR/C/79/Add.112, para. 17).

13. The ILO Indigenous and Tribal Peoples Convention (No. 169), which has been ratified by 14 States, identifies a number of elements for the practical enjoyment of the right to development. The Convention emphasizes the need for consultation with indigenous peoples in decisions that affect them. It also states that indigenous peoples shall be able to establish their priorities with respect to their development processes and stresses their participation in national development (art. 7). Convention 169 also stipulates rights especially important to indigenous peoples such as the identification and protection of property rights over land they have traditionally occupied as well as the use, management and conservation of the natural resources of their lands and the use of customary law.

14. The draft United Nations declaration on the rights of indigenous peoples and the draft American declaration on the rights of indigenous peoples of the Organization of American States contain articles that provide protection against harmful projects on their lands and promote meaningful participatory development in line with the provisions of the Declaration on the Right

to Development. The proposed American declaration stresses the right to economic, social and cultural development of indigenous peoples as well as their involvement in national development. It mentions the measures necessary to eradicate poverty and to overcome discrimination. The members of the Organization of American States in their Santiago Plan of Action (1998) have agreed to promote the participation of indigenous peoples in society, through adequate access to education, health care and occupational training, with the aim of improving their standard of living.

15. The Convention on Biological Diversity (CBD) articulates the importance of traditional knowledge in the protection of bio-diversity and the environment. Contracting parties to the Convention are requested in article 8 (j) to respect, preserve and maintain knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity. The article also promotes the equitable sharing of the benefits arising from the utilization of such knowledge, innovations and practices. The ad hoc open-ended inter-sessional working group on article 8 (j) and related articles established by the Conference of the Parties, established in 2000, provides advice on how the articles can be implemented at the national and international levels.

International financial institutions

16. The World Bank, one of the major institutions providing large-scale financing for development, established in its operational directive 4.20 of 1991 the policies and procedures for projects that affect indigenous peoples. The stated aims are to ensure that indigenous peoples benefit from development projects and to avoid or mitigate potentially adverse effects on indigenous peoples caused by Bank-assisted activities. In this sense the emphasis of the World Bank is on benefit-sharing and protection, as well as mitigation. An important aspect of the directive is that the borrowing country has to present a development plan for indigenous peoples whenever it asks for financing for a project that affects indigenous peoples. With regard to poverty reduction and indigenous peoples, the World Bank asserts that it has moved from a more uniform anti-poverty strategy to specific culturally adapted anti-poverty strategies based on the link between ethnicity and poverty.

17. The Inter-American Development Bank (IDB) elaborated a strategy on indigenous peoples and poverty reduction in 1997. This strategy reflects the move from a more mitigation-based approach, aimed at reducing the impacts of projects financed by IDB on indigenous peoples, to an approach aimed at strengthening indigenous institutions. In what the Bank calls "development with identity", it stresses the need to address the socio-cultural aspect of development in order for indigenous peoples to design and execute projects for their sustainable development without losing their cultural identity. The Bank also recognizes the role that indigenous populations can play as contributors to development projects in the region. IDB emphasizes the effective incorporation of indigenous peoples into national development, so as to improve their access to social services, income-generating programmes, bilingual education and poverty reduction programmes. In its reports, IDB also underlines the need for a better understanding of the aspirations of indigenous peoples with respect to their development, which should not be measured exclusively in material terms.

18. IDB also administers the Fund for the Development of the Indigenous Peoples of Latin America and the Caribbean established by the heads of State at the Ibero-American Summit in 1992. The objectives of the Fund are to provide resources for technical assistance, institutional strengthening and training of indigenous organizations as well as the mobilization of new resources from international financial markets and donor communities for investment in productive projects carried out by indigenous communities and organizations.

Specific protection of indigenous peoples from the negative impacts of development projects

19. The need to protect indigenous peoples from the negative impacts of development projects has been recognized by Governments and multilateral development organizations including the World Bank. Special protection measures have included compensation schemes, development plans for indigenous peoples, provision of social infrastructure, etc. Important elements of specific protection measures include not only consulting indigenous peoples regarding projects and obtaining their consent, but also measures to ensure that they benefit from such projects. Needless to say, indigenous peoples firmly believe that they should not be arbitrarily removed or relocated from their traditional territories and where they do agree to such removals, should be given compensation and the possibility of return. In cases where indigenous peoples' lands or natural resources are being used, benefit-sharing can take the form of joint ventures or share-holding of the project in question. It is important to move away from the view that indigenous peoples are merely vulnerable groups, to one that considers them as equal partners and whose rights over their lands and natural resources must be respected.

20. Indigenous peoples have said that they should have the right to exclude from publication or to have kept confidential certain information concerning their cultures, traditions or spiritual beliefs. In practice, governmental and private sector development is accommodating this concern in environmental, cultural and social impact surveys.

Mainstreaming of indigenous peoples' development

21. Several countries have introduced special programmes and projects to promote indigenous development. The question here is what kind of organizational State structure is more effective for this purpose: a separate entity, in the form of a Ministry for Indigenous Affairs, for example, or rather the mainstreaming of indigenous rights into all national development activities? Separate institutions often have a problem of legitimacy and limited resources and lack the power to protect and promote indigenous rights, leading to the danger that indigenous development will be marginalized. The advantage is that a special institution constitutes a focal point, where programmes and projects can be designed, implemented and coordinated and which has a clearly defined responsibility and resources. The advantage of mainstreaming indigenous peoples and their right to development into all areas of public policy is that it supports the integral character of development and allows indigenous issues to penetrate core institutions responsible for structural reform, such as the Ministries for Economic Affairs, Agriculture, etc. The disadvantage of the mainstreaming approach is that it is less clear who is accountable for the overall strategy. A balance of both approaches may ultimately bring the greatest benefits.

Strengthening indigenous organizations and structures

22. A strategy focusing on indigenous organizations and communities is referred to as the empowerment approach. The main idea of this approach is that the well-being of the community, the resources and the control over resources, decision-making and power are closely linked and that all are necessary to sustain a process aimed at the realization of the right to development. Strengthening indigenous organizations and communities through technical assistance, resources, capacity-building, community development and equitable access to infrastructure is a way of empowering indigenous peoples by strengthening their capacity to design and implement their own development programmes. The principles of capacity-building and community development maintain that effective participation in development requires appropriate education and training for indigenous communities. Ultimately, community development requires the sharing of decision-making with indigenous communities. Part of this empowerment process is to recognize customary law and to provide indigenous peoples with control over their resources, as well as access to public and private financing.

Full and equal participation of indigenous peoples in national development

23. One main strategy for the realization of the right to development of indigenous peoples is their full and equal participation in national development, including benefit-sharing. On the political level, this means representation of indigenous peoples in all democratic institutions, including government, parliament and the judiciary, as well as the military and police forces. In the socio-economic field, this would mean the implementation of measures to end discrimination in the job market and access to social security, education and credit. Moreover, affirmative action might be necessary to compensate for past injustice, including special credit schemes. With respect to cultural rights, full and equal participation would imply that indigenous peoples not only could use their language and social practices, but also that certain State services, such as schooling and the judicial system, would be made available in their language and respect their culture. Another issue raised by indigenous peoples relates to their greater participation in international and regional institutions and negotiations, including trade-related agreements. The Permanent Forum for Indigenous Issues may provide a mechanism for further involvement of indigenous peoples in intergovernmental development activities. Indigenous peoples have stated that partnership depends upon respect by outsiders for their cultures and traditions and relationships of indigenous peoples, and the avoidance of imposed external concepts, standards and value judgements. Development requires the building of quality relationships among the stakeholders based on respect.

Autonomy

24. Another main strategy, often proposed by indigenous peoples, is the realization of their right to development through some form of political autonomy or self-determination. Self-government rights typically include the control in some way or another of their lands and natural resources, as well as of their own education and communication systems. This strategy is usually associated with some kind of decentralization, in which indigenous peoples can create districts in which they form the majority and where they can constitute their own social and cultural practices, as well as their own forms of public administration.

Anti-poverty programmes, culturally adapted development and structural changes

25. Poverty is a serious obstacle to the realization of the right to development. Given the strong link between ethnicity and poverty in many countries, several international development institutions, such as the World Bank, UNDP and IDB, have started to work on poverty eradication programmes targeted especially at indigenous peoples. The question raised by these kinds of programmes is whether it is more effective to use a culturally adapted development strategy to eradicate the poverty of indigenous peoples, including bilingual materials, special training and protection measures, or whether to direct attention towards the structural causes of indigenous poverty, including discrimination in the labour and financial markets and the denial of rights over land and natural resources. Supporting indigenous self-development implies recognition, support and prioritization of the efforts of indigenous peoples in initiating and undertaking their own development, including the utilizing of their own resources, as they see fit.

26. Of vital importance in addressing poverty and promoting the sustainable development of indigenous peoples is the recognition of the traditional cultural obligation of guardianship or custodianship of their territories. This principle recognizes the holistic interconnection of humanity with the ecosystems and the obligations and responsibilities felt by many indigenous peoples to preserve and maintain their traditional role as guardians and custodians of these ecosystems through the maintenance of their cultures, spiritual beliefs and customary practices. It may also be noted that elders play a significant role in the development process of many indigenous peoples and that successful community projects often ensure participation by all social and age groups.

Development cooperation and financing

27. Development cooperation and financing are essential for the promotion of the right to development of indigenous peoples. The right to development requires that States and the international community make resources available on an equitable basis. Indigenous peoples argue that they are often excluded from the private and public resources necessary for their development because they lack access to commercial credits; this leads to further exclusion from public investment in major development projects, social services and infrastructure. In international development cooperation, it is important that fair development policies be promoted which ensure that funds are made available for indigenous self-development. Adequate financing is essential if indigenous peoples are to realize their right to development.

Other considerations

28. The principle of full disclosure recognizes that indigenous peoples are entitled to be fully informed about the nature, scope and ultimate purpose of any proposed activities, such as development, that impact or may impact on their cultures in any way. This may include research, data collection, and the dissemination and application of results, developmental studies and developments of any kind carried out by "outsiders", including the authorities of the States where they find themselves living. It is argued that such information should be given in a manner that takes into consideration and actively engages with the body of knowledge and cultural preferences of indigenous peoples and their respective communities.

29. Many indigenous peoples argue that their prior informed consent is necessary before research or other activities, including development, are undertaken. They claim the right to veto any programme, project or study that would affect them. Prior informed consent presumes that all communities will be provided with full information regarding the purpose and nature of their activities and probable results, including all reasonably foreseeable benefits and risks (be they tangible or intangible) to the affected communities.

30. Of major importance to sustainable development and the protection of the environment is the principle of precaution. This principle acknowledges the complexity of interactions between cultural and biological communities, and thus the inherent uncertainty of effects due to genetic, ethno-biological and other research and development activities. The precautionary principle advocates taking pro-active, anticipatory action to identify and prevent biological or cultural harms resulting from research activities and development, even if cause-and-effect relationships have not yet been scientifically proven. The importance of the active participation of indigenous peoples in the early planning stages of development, including the establishment of local criteria for environmental, social and cultural impact studies, is paramount to successful developmental processes.

The need for dialogue

31. The concept of a dynamic interactive cycle holds that development should not be initiated unless there is reasonable assurance that all stages of the project can be completed, from (a) planning, preparation and evaluation; through (b) full implementation; to (c) evaluation and return of benefits to the community; to (d) training and education (capacity-building and community development), as an integral part of development projects. Thus, all development can be seen as cycles of continuous and ongoing dialogue with indigenous communities. Such a dialogue can promote the concept of equal partnership.